S.B. Civil Writ Petition No.6979/07
LRs. of Vichitra Singh
vs.
Civil Judge (JD) West, Bhilwara & anr.

Date of order: 25.10.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr. Suresh Shrimali for the petitioners.

Heard learned counsel for the petitioners.

The petitioners are aggrieved against the order dated 17.9.2007 by which the petitioner's objection filed under Section 47, C.P.C. was dismissed by the trial court.

It is not in dispute that a suit for eviction of all the legal representatives of deceased Vichitra Singh was filed by the non-petitioner-plaintiff and ultimately the matter came up before this Court in tenant's appeal. The tenant's appeal was dismissed by the High Court with indulgence that the tenant shall not be evicted upto 30.6.2007. It appears that one of the judgment debtors, son of Vichitra Singh, submitted the objection under Section 47,C.P.C. before the executing court with the plea that on 12.6.2007 all the parties entered into agreement and that agreement was signed by both the parties. In view of that agreement, the possession of the suit property was handed over to the decree holder and both the

parties agreed that there remains nothing to be done in pursuance of the decree obtained by the non-petitioner- land-lord. However, in the agreement, it is mentioned that the landlord let out the property to one of the son of Vichitra Singh and for that purpose a separate rent-deed has already been executed by the landlord and Ravindra Kumar s/o Vichitra Singh. The petitioner's said application was dismissed by the trial court after rejecting all the contentions of the petitioner vide order dated 17.9.2007.

The learned counsel for the petitioners submits that the petitioner requested that the matter may be enquired into. The documents, the compromise and the rent deed are signed by the landlord and the non-petitioner and, therefore, the trial court should not have rejected the petitioner's application filed under Section 47, C.P.C.. It is submitted that the decree stands satisfied by the compromise dated 12.6.2007.

I considered the submissions of the learned counsel for the petitioners and perused the documents placed on record by the petitioner.

It is not in dispute that decree was obtained by the landlord on the ground of personal bonafide necessity and in the High Court, the tenant requested for grant of some time and, therefore,

the High Court granted time to vacate the suit premises upto 30.6.2007. Even as per the alleged agreement dated 12.6.2007 (Annx.5), the tenant judgment debtor including the objector agreed to hand over possession of the suit property and handed it over to the landlord. It is strange that a decree for eviction was obtained by the landlord and in which the tenants were given time to vacate the suit premises upto 30.6.2007, the landlord would have entered into compromise so as to let out the property to the same judgment debtor (the son of the original tenant), from whom also the possession was taken as per the agreement dated 12.6.2007. It appears that the story, on the fact of it, is concocted one and needs no enquiry. The enquiry under Section 47,C.P.C. is not like a trial of the suit. The frivolous litigation is required to be nip in the bud at the earliest point. It remained unexplained that in case the landlord who obtained the decree on the ground of personal bonafide necessity and takes possession of the property, how he can let out it to other person in view of Section 15 of the Rajasthan Premises (Control of Rent and Eviction) Act. In either case, the property will remain in the possession of the same party, may it be on the ground of creation for the alleged new tenancy in favour of the same person or the tenants may take possession of

the property in dispute on the ground that the landlord has not utilized the property for the purpose for which he obtained the decree and the tenants are entitled to possession of the property again from the landlord in view of Section 15. Unless there are cogent reasons for holding enquiry, there is no reason to hold enquiry under Section 47.

In view of the total improbabilities in the case of the petitioner, I do not find any justification to interfere in the order passed by the court below by exercising power under Article 226 of the Constitution of India. Hence the writ petition of the petitioner is dismissed.

(PRAKASH TATIA),J.

mlt.